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AMERICAN VERSUS ENGLISH COURTS.

BY WILLIAM N. GEMMILL, JUDGE OF THE MUNICIPAL COURT OF CHICAGO.

It seems to be accepted by most of our present-day writers on law reforms that the English courts are much superior to our own. In contrasting the two court systems, no effort has been spared to magnify the virtues of their system and to exaggerate the faults of ours. I desire as briefly as possible to call attention to some erroneous statements frequently made on this subject.

In the REVIEW of January, 1910, Professor James W. Garner says:

"The English Master of Judicial Statistics, in a letter to Hon. Joseph H. Choate, describing the promptness and despatch with which trials are conducted in England, stated that *twenty-three judges handled all the litigation of England and Wales* with a population of 32,500,000, and that they actually tried and determined *an average of five thousand cases a year*, or more than twice as many as are tried by forty-three judges in New York and Kings counties. As I write (July 1, 1909) there lies before me a copy of a news despatch which states that the English Court of Appeals has decided practically all the appeals that were on the docket at the present term. . . . This seems wonderful indeed to us who are accustomed to a system under which our appellate courts are usually from one to three years behind."

It seems strange that the wholly erroneous statement that *twenty-three judges handle all the litigation in England and Wales* has gone so long without challenge. The twenty-three English judges referred to are the judges of the English High Court of Justice, seven being members of the Chancery Division and sixteen of the King's Bench Division. But a comparatively small part of the time of these judges is given to the *nisi prius* courts. Much of their time is engaged in hearing appeals. In 1907, 1,339 appeals were taken from the judgments entered by Regis-

trars and Referees to the King's Bench Division of this court. The new Criminal Court of Appeal is composed of the Lord Chief Justice and eight of these twenty-three judges of the High Court of Justice. From May 15th, 1908, to December 10th, 1909, this court disposed of 339 criminal appeals. The judicial force of England is made up substantially as follows:

House of Lords	5	Judges
Court of Appeal.....	6	"
High Court of Justice.....	23	"
Probate and Divorce.....	4	"
County Courts	65	"
Metropolitan, Mayors' and City Courts.....	57	"
Recorders'	61	"
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Total	221	Judges

The Recorders are judges who try most of the important criminal cases in England. In addition to the above, there are 693 official referees, masters and registrars to whom causes are referred for trial and who have the same power, in cases so referred, as have the judges, to hear evidence and enter final judgments. There are also many stipendary magistrates, mayors, aldermen, clergymen and common sergeants who hold court from time to time.

Neither is it true that these twenty-three judges try and determine *on an average of five thousand cases a year*. The average number of cases begun each year in the High Court of Justice for the last twenty years is 79,427. The average number of cases tried each year by all of these twenty-three judges combined for the last twenty years is 3,162. The average number actually tried by each of these judges each year during this period is one hundred and fifty and one-half. The average number of cases tried during the year 1907 by each judge of the King's Bench Division, including both civil and criminal cases, was 291, and the average number tried during that year by the seven judges of the Chancery Division was 75.2. The other cases begun in the High Court of Justice were either disposed of on motion or by the official masters and referees. But a small part, however, of the total litigation of England is disposed of in the High Court of Justice presided over by these twenty-three judges. In 1906, 1,452,804 suits were begun in all the courts of England and Wales. Of this number 1,338,269 were begun in the County Courts, and the twenty-three judges referred to had nothing to

do with any of them. Of these 38,617 were tried by the county judges without a jury, 929 were tried with a jury, 404,448 were tried by the registrars and referees; defaults were taken in 448,037 cases and 413,037 were dismissed.

It will be observed from these figures that the official registrars and referees tried and disposed of ten times as many cases in the county courts as did the judges of these courts.

Professor Garner further says:

"A comparison of the percentage of reversals in America with that in England affords striking evidence of the different attitude taken by the English Appellate Courts toward questions of error in the trial of criminal cases. . . . It is a rule of the English procedure that a judgment or verdict of a trial court shall never be disturbed or a new trial granted for error if the evidence admitted is sufficient to justify the judgment or verdict. . . . One result of this rule has been to greatly diminish the number of appeals in England, *not more than one case in ten being taken up for review as against every three or four in America.*"

The records do not sustain the foregoing statement. The judicial statistics of England and Wales for 1907 show that there were 97 appeals disposed of by the Judicial Committee of the Privy Council in that year. Of this number 27 were affirmed, 14 reversed, 11 dismissed and 1 varied. In the House of Lords the same year 73 petitions for appeal were disposed of, 48 were affirmed, 25 reversed. In the Court of Appeal the same year 524 cases were disposed of; 81 were withdrawn before hearing, 281 were affirmed, 22 varied, 128 reversed, 32 otherwise disposed of. During the same year there were 1,339 appeals to the King's Bench from official referees, registrars and recorders. Of these 702 were affirmed, 199 reversed and 178 varied. There were 339 applications for appeal to the new Court of Criminal Appeal from its first session (May 15th, 1908) to December 10th, 1909. Of this number 102 appeals were denied, 237 were allowed. Of the 237 allowed 140 were afterwards dismissed, the sentences quashed in 46, reduced in 50 and increased in one case. This court has no power to remand a case for new trial. It may either dismiss the appeal, quash the sentence, reduce or increase the penalty.

Professor Garner speaks of the law's delay and cites the condition of the court calendars in New York and Chicago in 1903 and 1907. At the beginning of the year 1907, there were pending

in the County Courts of England and Wales 93,168 cases and at the end of the same year 104,262 cases. There is substantially no delay at this time in the courts of Illinois in the trial and disposition of causes outside of the Appellate Court for the First District. At the October term, 1908, the Supreme Court of Illinois had written opinions in every pending case in that court, and in October, 1909, there were not over twelve pending cases in which opinions had not been written. An appeal now filed in the Supreme Court of this State will, in the ordinary course of events, be decided within a period of two months. From October, 1906, to October, 1909, the Supreme Court of Illinois decided 1,512 cases. Of this number 1,104 were affirmed, 498 reversed or reversed and remanded. From 1901 to 1908 the New York Court of Appeals disposed of 30 appeals from convictions of murder in the first degree. Of these 26 were affirmed, 2 dismissed and 2 reversed.

From December, 1906, to December, 1909, the Municipal Court of Chicago disposed of 126,213 civil cases and 197,347 criminal cases. From these judgments there were but 1,256 appeals or writs of error prosecuted, 1,188 being in civil and 68 in criminal cases. Of the 614 civil appeals decided up to date 229 were dismissed, 232 affirmed and 152 reversed. Of the criminal appeals thus far decided 56 per cent. have been affirmed. During the same period 5,596 felony cases were tried in the Criminal Court of Cook County. From the judgments in these cases there have been 116 appeals or writs of error prosecuted. Instead, therefore, of there being *one appeal for every three or four cases tried* there has been but *one criminal appeal for every three thousand cases* tried in the Municipal Court of Chicago and one appeal for every fifty cases tried in the Criminal Court of Cook County. Of the total 202,942 criminal cases tried in the Municipal Court of Chicago and Criminal Court of Cook County in the last three years 80 per cent. were tried within twenty-four hours after the arrests were made and 95 per cent. within ten days from the date of arrest, and no one was compelled to wait over four months for a trial if he desired one.

Professor Garner adds:

"Our judicial annals show that a large proportion of the criminals of this country who have been punished in recent years have had the benefit of at least two trials and convictions."

Instead of a *large proportion* of criminals of this country receiving the benefit of at least two trials, the records show that less than one-tenth of one per cent. of the criminal cases tried in Cook County are appealed, and in not over 44 per cent. of these are new trials granted.

Professor Garner further says:

"It has come to be a common belief that the rich criminal with unlimited means at his command for employing able and ingenious counsel and for meeting the heavy costs of litigation in the higher courts, can by means of appeal and new trials escape the punishment which he deserves."

This belief does not possess the mind of any one who knows anything about the facts. Indeed, the rule is entirely otherwise. Rich bankers, almost without exception, when once indicted have been convicted and their convictions sustained by the Courts of Appeal. The same is true of nearly all public officials who have betrayed their trusts and of those who with great power, wealth and influence have been arraigned in court charged with some offence against the law. Seldom has such a one escaped punishment. On the other hand, thousands of poor who have committed offences equally grave are permitted to go from our courts without punishment for no other reason than that they are poor and others are dependent upon them for support.

Professor Garner closes his article with the following statement:

"The old severity of the penal code has long since passed away. Yet the ancient procedure with all its loopholes of escape and all the safeguards of presumption in favor of the criminal is to a large extent still retained. . . . In the interest of justice as well as social order and security, it ought to be modified as it has been in England where it originated."

It is true that the old severity of the penal code has long since passed away in America, but it is not true that it has passed away in England. Last year 2,033 persons were judicially flogged in England and Wales; some of them were juveniles. Most of the victims flogged had been guilty of drunkenness, vagrancy, begging upon the public street or sleeping in the open air. A characteristic case of this kind is that of William Anthony, who was tried by the Chairman of the Dorchester Quarter Sessions on July 1st, 1908, charged with begging and sentenced to twelve months' imprisonment and two floggings three months apart of ten strokes

each with a birch rod. Under the present English criminal statute, vagrants found guilty may receive corporal punishment unlimited as to amount or instrument, and this punishment may be inflicted in public. Brutal murderers are sometimes permitted to escape punishment on pure technicalities.

On March 5th, 1908, A. E. Dyson brutally beat and murdered his daughter. He was tried, convicted and sentenced to ten years' penal servitude. The Court of Appeals quashed the conviction because the trial judge misdirected the jury upon a technical point. There was no doubt of the prisoner's guilt, but he escaped all punishment.

The punishments inflicted by the criminal courts of England for trivial offences are exceedingly harsh. Alice Sprake was convicted on October 21st, 1909, in the Cardiff Quarter Sessions of stealing twelve cents' worth of coal from the Taff Vale Railway Company and was sentenced by the Recorder to four months' imprisonment at hard labor. She did not steal the coal, but sent her little boy to obtain it. The Lord Chief Justice of England, in affirming this sentence in 1909, said: "Although appellant was formerly of good character and this was her first offence, it cannot, in our opinion, be said that four months' imprisonment at hard labor was too severe a sentence."

An English writer for the August, 1909, "Westminster Review," after reviewing the first year of the new Court of Criminal Appeals, said: "It is hard to suppress an uneasy feeling that in the past, and only recently, not a few prisoners must have endured the worst of punishments because they had not the opportunities which now exist for reviewing the proceedings of the court which convicted them."

In addition to the severity of the punishments inflicted, any one against whom a civil judgment has been obtained in a Justice of the Peace Court in England may be sent to jail for a period of one year unless the judgment is paid. From 1899 to 1905 the number of persons imprisoned for civil debt in England and Wales increased from 12,706 to 20,290. This was exclusive of the 92,000 sent to jail during 1907 for failure to pay a fine.

The Hon. E. H. Pickersgill, Chairman of a Committee appointed by Parliament to propose amendments to the English law concerning imprisonment for debt, in writing for the "Fortnightly Review" in January, 1910, said: "Ten thousand are im-

prisoned annually, not because they will not, but because they cannot pay. There are 150,000 warrants of commitment issued annually. Credit is given right and left without inquiry because of the power of imprisonment."

The conclusion of Professor Garner, and many others who have written upon this subject, is that by reason of our ancient criminal procedure and the many avenues of escape, crime has rapidly increased in America and is much more prevalent here than in Europe. This conclusion is entirely erroneous. Not only is there less crime in the United States than in Europe, but the more serious crimes in the United States are rapidly decreasing.

The following table of figures gives some idea of the prevalence of crime in the several countries:

1904	Population	Total arrests	Total convictions	Total sent to prison in year
United States.....	81,517,659	1,212,574	—	149,691
England and Wales.	34,945,600	794,981	641,211	188,329
German Empire....	60,886,000	599,262	505,158	256,316
France	37,961,701	538,557	386,484	182,412

We have no statistics showing the number of convictions in the criminal courts of the United States. I have given the number of arrests in the United States as reported by the police for the year 1904 and the number of persons sent to prison for that year in the United States as shown by the Government Prison Census published by the Department of Commerce and Labor. It is most unfortunate that we have not kept pace with European countries in the matter of criminal statistics. From these figures it will be observed that the prison population of the several countries of Europe is much larger than ours and the number of arrests is much greater. The English Government reports for 1907 show that there were 11,409 persons arrested for burglary in England during that year and only 14,305 in this country. Our population is two and one-half times theirs. Larcenies in England increased from 42,292 in 1899 to 50,155 in 1905. The United States Prison Census for 1907 shows a marked decrease in crime in this country during the last ten years, twenty States showing a decrease and twelve States a slight increase. In Illinois in 1890 there were 102.9 prisoners for every one hundred thousand population; in 1904 there were only 60.8 prisoners for every one hundred thousand.

In the Illinois State Reformatory at Pontiac, where the law

requires that all persons in the State between the ages of ten and twenty-one, convicted of felonies, be confined, there were on July 1st, 1899, 1,397 prisoners. On January 1st, 1910, this number had been reduced to 745 prisoners. A like decrease for the next ten years will cause the closing of the institution or the conversion of the same into a school for young men.

From 1868 to 1898 an average of 7,279 prisoners were admitted to the Illinois State Penitentiary at Joliet every ten years, but from 1898 to 1908 only 4,704 were admitted. From December, 1907, to December, 1908, 8,429 persons were arrested in Chicago charged with felonies. From December, 1908, to December, 1909, this number was reduced to 6,524, a decrease of twenty-one per cent.

The judges of the English courts are much older than our judges and their terms of service on the bench much shorter, notwithstanding the fact that the English judges of the House of Lords, Court of Appeals and High Court of Justice are appointed for life. These appointments are not made until the men are past middle age. The average term of service on the bench of all of the present judges of these courts up to January 1st, 1910, is only six and one-half years, while their average age on the same date was sixty-four years. It follows as a matter of course that these judges are less efficient than are our judges, who are mostly in middle life and whose term of service is much longer.

In conclusion, I wish to say that in proposing law reforms, we ought first to make a conscientious effort to acquaint ourselves with the facts and not follow blindly any system until we know where it will lead us.

WILLIAM N. GEMMILL.